



July 16, 1999

Ms. Nancy H. Reyes
Escamilla & Poneck, Inc.
1200 South Texas Building
603 Navarro Street
San Antonio, Texas 78205-1826

OR99-1998

Dear Ms. Reyes:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 125796.

The San Antonio Independent School District (the "district"), which you represent, received a request for a copy of the audit including receipts of a specific high school organization. You claim that most of the responsive information has been released. You claim, however, that portions of the submitted documents are excepted from disclosure under sections 552.101, 552.111, and 552.114 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, you claim that portions of the audit are excepted from disclosure under section 552.111. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matter; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. After careful review, we conclude that most of the information you have marked is factual and administrative in nature, and does not relate to the district's policymaking function. We have marked the small portion of the audit that consists of advice, recommendation, or opinion. The remaining portions of the audit may not be withheld under section 552.111.

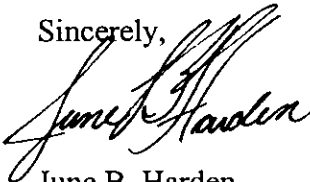
You also claim that the submitted documents contain information that must be withheld pursuant to sections 552.026 and 552.114 of the Government Code, and pursuant to the Family Education Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. In Open Records

Decision No. 634 (1995), this office concluded: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." It appears that, pursuant to FERPA, the district has redacted certain information from the submitted records. We agree that such information must be withheld pursuant to sections 552.026 and 552.114.

Finally, you assert that certain third-party financial information contained in the submitted records is protected from disclosure under section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). After careful review, we agree that the submitted checking and credit card numbers are protected by common-law privacy and must be withheld. We note, however, that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). Thus, the district may not withhold the sentence found on page 40 of the audit.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden", written in a cursive style.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 125796

Encl. Marked documents

cc: Ms. Jo Anne Coleman
358 Gazel
San Antonio, Texas 78213
(w/o enclosures)